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DEPARTMENT OF STATE
ASSISTANT SECRETARY

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April 10, 1959
4/10/59

TO: The Acting Secretary
THROUGH: S/S
FROM: EUR - Mr. Merchant

I attach a small briefing book containing papers to be used by our Working Group during its London meeting starting April 13 as well as the copy of a letter I sent to Jack Irwin of Defense yesterday. (TAB E)

The Working Group papers have been cleared by Gerry Smith and Lofty Becker and others, but neither Bob Murphy nor Freddie Reinhardt has expressed his views yet. The papers have been circulated in the inter-agency ad hoc working group chaired by Foy Kohler and have been revised slightly as a result of discussions in that group.

It is our plan to table the three tactics and two German peace treaty principles papers at the opening of the Working Group meeting.

We are awaiting a formal reply from Jack Irwin to the letter enclosed which contains our reaction to certain reservations made by Defense to the security and arms control provisions of the "phased plan" paper (Tab D).

(2) Enclosures.

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TACTICS

The tactical considerations outlined below do not take into account the question of the duration of the Foreign Ministers' meeting. Whether it would be to the West's advantage to prolong the meeting or to cut it short will depend on developments prior to and during the meeting. Among the variables which bear on this judgment are: (1) Soviet willingness to discuss a Western comprehensive plan for reunification; and failing this, (2) Western agreement to discuss a peace treaty, either on the basis of a statement of principles or a Western draft, and (3) Western agreement to discuss the Berlin problem separately. In any case, it seems likely that the meeting will last beyond May 27, although that date may no longer be significant in view of recent Soviet statements re unilateral action.

I. Probable Soviet Tactics

1. It is unlikely that the Soviet Foreign Minister will engage in serious negotiations at the May 11 meeting except on terms unacceptable to the West.

2. If the Soviet Foreign Minister speaks first, he will probably table the Soviet draft peace treaty and the Soviet proposal on Berlin as a basis for discussion.

3. It is likely that the Soviet Foreign Minister will reject the Western position that a peace treaty can be negotiated only with an all-German government and that the Berlin problem can be resolved only in the context of an all-German settlement.

4. The Western comprehensive plan for German reunification, European security and Berlin may be rejected or;

The Soviet Foreign Minister may not reject the Western plan out of hand but instead insist that its broad scope requires the immediate seating of Polish and Czech representatives.

5. The Soviet Foreign Minister may propose a separate discussion of the Berlin problem.

6. Inasmuch as the Soviets appear determined to hold a Summit meeting, they may be expected eventually to agree: (a) to attempt to delineate the areas of disagreement on the German (or Berlin) problem for resolution by the Heads of Government,

(b) to examine...

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(b) to examine procedural arrangements for a Summit meeting possibly including an agenda permitting Heads of Government to raise any issue for discussion as well as (c) the place, date and duration of a Summit meeting.

Recommended Western Position

II. Preliminary Moves

1. From a tactical point of view it seems necessary that the Western powers act on the working assumption that there may be a Summit conference sometime after the meeting of Foreign Ministers. It would be desirable, therefore, for them to take advantage of the tactical opportunities at this level to influence both public opinion and the course of developments affecting a Summit conference.

2. If it is agreed that the May 11 meeting will be essentially a public relations exercise, we should probably set forth the main elements of the Western position in advance of the Foreign Ministers' meeting in clear and simple terms. This might be done in the form of a communique to be released upon completion of the Western Foreign Ministers' discussions now scheduled for April 29.

One drawback to this approach, however, is that such a prior official disclosure of at least the main elements of the Western position may elicit a public Soviet rejection before the beginning of the Foreign Ministers' meeting. This would then put the Western Foreign Ministers in the awkward position of having to table a plan which they knew had already specifically been declared unacceptable.

3. Such a communique should be based on the approved report of the Four Power Working Group. It should prescribe the principles which the Western powers believe must underlie a general European peace settlement. It should refer to the new elements in the Western position on the German problem representing forward steps which could be acceptable if there is a corresponding willingness on the Soviet part to reach agreement within these principles. These new elements are:

- a) The postponement of free elections;
- b) The formation of an all-German council;
- c) Certain security provisions.

The communique should make clear that the Western powers will never use force to achieve their objectives but are

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willing to negotiate about them. It should leave no doubt that we will use whatever force may be necessary to defend our rights to be in Berlin and to maintain free access thereto.

4. In addition to mobilizing public opinion behind the Western position, the Western Foreign Ministers face the task of presenting a formulation of a Summit agenda which the Soviet delegation will find it difficult to reject. Within such a formulation any Head of Government should have the right to raise for discussion any issues he considers relevant to the problems under discussion. Neither side should be able to foreclose discussion of proposals by the other which it might find objectionable. In this way Western Heads of Government would be able to submit proposals for reunification of Germany and, if considered appropriate, to express their views on the Eastern European situation. If Soviet agreement to this type of broad agenda formulation is obtained at the May 11 meeting, the West could consider that this meets the pre-conditions for Western agreement to a Summit conference set forth in the Western notes of March 26.

In working toward this formulation, the Foreign Ministers' meeting can be effectively utilized by the West to elaborate upon its position outlined in the advance communique, with the addition of the following points:

5. That any unilateral Soviet action while negotiations are in progress on any aspect of the situation under consideration would be regarded as an act of bad faith. If the Soviets should transfer to the "GDR" their responsibilities with regard to Allied access to Berlin either through signature of a peace treaty or through some other procedure, Western tactics would, of course, have to be modified.

6. An unequivocal declaration of our determination to defend our rights and willingness to negotiate over objectives.

III. Tactics at May 11 Conference

1. If the Soviet Foreign Minister speaks first, he will table the Soviet draft peace treaty and the Soviet proposal on Berlin as a basis for discussion.

2. Whether the Soviet Foreign Minister speaks first or not, it would be to the West's advantage to table immediately the Western comprehensive plan in order to forestall the Soviets

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from raising the question of its suitability in any subsequent agenda discussion.

3. In presenting this plan, the Western Foreign Ministers should point out that, in their view, a peace treaty can be negotiated only with an all-German government and that the Berlin problem can be resolved satisfactorily only in the context of an all-German settlement. They should make clear that the Western plan is an inseparable package and must be considered in its entirety. They should call attention specifically to the new elements in the plan and describe them as modifications of the 1955 Western position designed to meet the concern which the Soviets have expressed with regard to the need for German participation in the reunification process and to the future status of a reunified Germany. They should also express the view that it is incumbent on the Foreign Ministers at this meeting to take up the unfinished business of 1955 when they last met to discuss the German problem and that discussion of the Western comprehensive plan would advance progress toward implementing Point 1 of the 1955 Directive from the Heads of Government to the Foreign Ministers -- European Security and Germany.

4. The Soviet Foreign Minister may reject the Western approach and refuse to discuss the comprehensive plan on the ground that it pertains to reunification which he would say is the exclusive concern of the two Germans. In this case, the West should declare its intention to publish the plan and to explain publicly that the Soviet Government refuses to discuss anything but its own proposals.

5. On the other hand, the Soviet Foreign Minister may not reject the plan out of hand. He may, instead, turn to the question of composition and insist on the immediate seating of Polish and Czech representatives because of the broad scope of the Western plan. The West should welcome this tactic, for a debate on composition would be preferable to a debate on agenda. The latter would inevitably focus on the reunification issue and freeze the agenda positions of the two sides with regard to a possible Summit conference. Furthermore, a discussion of composition would permit the West to put forward its ideas on a whole range of issues which it considers pertinent to the German problem.

6. Even if the Soviet Foreign Minister follows this tactic, it is unlikely that the discussion, while useful to the West in that it would facilitate laying out the Western rationale for further negotiations, would lead to a meeting

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of minds on any significant problem. The West would then be faced with following alternatives:

- a) to consider further substantive discussion at the Foreign Minister level as useless;
- b) to discuss a peace treaty either on the basis of a Western draft text or a Western statement of principles;
- c) to table something like the Grewe Plan in an effort to meet the Soviet insistence that only the two Germanies can discuss reunification; or
- d) if the Soviets should so propose, to enter into a separate discussion of the Berlin problem by tabling the Western fall-back proposal for all-Berlin elections, retention of Western troops in Berlin, and guaranteed access, and, perhaps, other proposals that may be agreed.

5. Whichever of the latter alternatives were adopted, it is unlikely that the ensuing discussion would amount to more than an exposition of Western and Soviet points of view, since the Soviet Foreign Minister would undoubtedly behave in accordance with Khrushchev's precept that only Heads of Government can decide issues and reach agreement. In this case the Foreign Ministers' task would be to attempt to delineate the areas of disagreement on the German (or Berlin) problem for resolution by Heads of Government and then to examine procedural arrangements for a Summit meeting.

6. In such an examination, the Western Foreign Ministers should ideally seek Soviet agreement to a Summit agenda consisting of the following three broad categories:

- a) A European peace program, including settlement of questions relating to Germany and European security;
- b) Disarmament and related measures;
- c) Other topics.

Such an agenda would make it possible for the Heads of Government to raise any issue for discussion and thus insure that neither side would have the right to foreclose consideration of proposals by the other (i.e., for the Western side, German reunification and aspects of European security which involve Eastern Europe).

7. If agreement is reached on an agenda formula, the Western Foreign Ministers could then discuss the place and date of a Summit meeting.

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COMPOSITION
(The Polish-Czech Participation Problem)

Soviet Position

1. The present Soviet position with regard to the participation of Poland and Czechoslovakia in the Foreign Ministers' conference of May 11 is that the question should be settled at the conference itself. It is likely that the Soviets will at an early stage in the conference insist on the participation of Poland and Czechoslovakia because of their "direct interest in the solution of questions relating to Germany as neighbors of the German states and the first victims of Hitlerite aggression".

2. While the Soviet aim may still be parity of representation at any international conference, their position on participation is now expressed in more reasonable terms than in the past. In the last year's correspondence and talks preparatory to a Summit conference, the Soviets took the position that the composition of a Heads of Government conference should be determined in accordance with the principle of parity.

(This position was originally set forth in Gromyko's letter to Pineau of March 1, 1958 in which it was suggested that countries be represented at a Summit conference "on a parity basis, for example, that the West be represented by France, the US, the UK and Italy and the East by the Soviet Union, Poland, Czechoslovakia and Rumania". This position was further confirmed in the Soviet Aide Memoire of April 26 to the three Western powers in which the Soviet Government again stressed "the principle of parity" as "a fundamental principle for the determination of the composition of a conference of Heads of Government which would exclude any discrimination whatsoever and guarantee their equality". The Soviet principle of parity was given lower level application in the Ambassadorial talks in Moscow of last spring when Gromyko insisted on seeing the three Western Ambassadors separately after the Western powers refused to accept as a condition for joint meetings Soviet insistence on the participation of Czech and Polish Ambassadors).

3. In the current exchange of notes on Germany and Berlin the Soviets have taken the position (their March 2 note) that a Summit conference should be attended by such interested countries as Poland and Czechoslovakia as states that border on Germany and were the first victims of Hitlerite aggression. With regard to a Foreign Ministers' conference, the Soviets specifically stipulated in the March 2 note that the Foreign Ministers of Poland and Czechoslovakia as well as those of the Big Four should attend, - that is, parity of representation.

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4. It is clear therefore that the Soviet public position on participation has changed substantially from that of last year with regard to a Summit conference. The Soviets have also adjusted their position on participation in a Foreign Ministers' conference since March 2. The present Soviet criteria with regard to participation appear to rest on geographic location and historical relationship to Nazi aggression.

Western Position

1. In their notes of March 26 the US, UK and France took the position that the Foreign Ministers' meeting at the outset should involve only the Four Powers responsible for Germany. They recognized, however, that Poland and Czechoslovakia like a number of other countries have a legitimate and direct interest in certain matters which would be discussed at the conference and that the possibility of participation of other countries at a certain stage of negotiations could therefore be contemplated.

2. During the meetings in Washington on March 31-April 4, it was agreed that the US, UK and France would support Italy's participation in the conference at an appropriate time. It was not made clear in the talks with the Italians whether their participation was to be made expressly conditional on Polish-Czech participation. In any case, it would be left to the three Western powers to judge when the appropriate time has arrived. Presumably, Western representation of the Italian case would be in accordance with the following formula previously agreed tripartitely: If Poland and Czechoslovakia are admitted to the conference as full participants, Italy must be invited on the same basis; if Poland and Czechoslovakia are present at any stage as observers, Italy, if it wishes, should be invited to attend with the same status. (The question of a public tripartite declaration, possibly at the April 29 meeting, remained unresolved because of Italy's insistence that we state our intentions "to press for Italy's participation").

3. In dealing with the composition problem raised by Soviet insistence on Czech-Polish participation, the Western powers should be guided by the following considerations:

a) The need for assuming a reasonable posture on composition and for avoiding Western responsibility for collapse of the negotiations on procedural grounds.

b) The desirability of restricting participation, at least at the outset, to the Four Powers and, if this is not possible, confining participation to manageable proportions.

c) Avoidance, in any case, of conceding the principle of parity.

d) Honoring the Western commitment to Italy.

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4. In line with these considerations, we should at the outset insist that the conference be limited to the Big Four in accordance with the principle of Four Power responsibility for the German question. We should, of course, be consistent with the position we have taken in our notes of March 26 and indicate our willingness to consider expansion of participation when certain aspects of the German problem - for example European security measures - are under discussion.

5. If the Soviets insist on the immediate seating of Poland and Czechoslovakia, we should take the position that if the conference is to be extended beyond the Four Powers then other countries would have just as valid a claim as Poland and Czechoslovakia. (We should be prepared to discuss such countries - e.g. Italy, Netherlands, Belgium - depending to some extent on guidance provided by NAC discussions). We should point out, however, that broadening of the conference participation would reduce the chances of serious meaningful negotiations.

6. The Soviets would probably ignore this argument. If they insist that Poland and Czechoslovakia attend because they are neighbors of Germany and victims of Nazi aggression, we might consider pointing out that if these are the criteria for participation then at least four additional Western countries would be entitled to attend - i.e., the Netherlands, Denmark, Luxembourg and Belgium. This line of reasoning might have some effect. The Soviets might realize that adherence to their own criteria would mean not only an unwieldy conference but also a composition formula which would be more remote from their parity objective than a Big Four formula. If, or not this would be the case, they would probably continue to press for Czech-Polish participation, although perhaps adjust their rationale to reflect their former demand for parity of representation. (At this point we should put forward for the record the traditional arguments against the parity concept).

7. We should take the position that if the Soviets insist on extending participation beyond the Four Powers, we must because of our obligations to our Western Allies insist on Italy's participation. We should probably indicate that to avoid complicating the work of the conference it would be more desirable for Poland and Czechoslovakia and Italy to attend initially as observers. If the Soviets, however, insist on full participation, we should agree.

8. While it is conceivable that the Soviets would settle for this formula, it is more likely that, in line with their Summit position of last year, they would insist on adding Rumania to offset Italy. The Western powers might meet this contingency by the following alternative courses of action; preferably by (a):

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a) We could express our view that there is no justification for the participation of Rumania over other countries and that the Soviet position in this regard means to us that the Soviets are interested only in numerical equality or what they call "parity". While we see no legal or rational justification for the principle of parity our primary interest is to get on with a substantive discussion of the Western comprehensive plan (which it is assumed will have been tabled by this time) and we are, therefore, prepared to accept Rumanian participation if this is agreeable to other countries concerned.

b) We could counter the Soviet demand for Rumanian participation by insisting on representation of all countries having an equal or even more legitimate interest in the settlement of the German problem (i.e. at least all European countries which were at war with Nazi Germany). We should point out, however, that we fail to see how such an approach would be conducive to the sort of serious negotiations in which the Soviets themselves profess to be interested.

c) We could suggest that if the Soviets are not prepared to accept a formula providing for full participation of Italy as well as Poland and Czechoslovakia, direct participation in the conference should be limited to the Big Four and all other countries which have a legitimate interest in the problems to be discussed would be invited to sit as observers.

9. The Yugoslavs have made demarches in all four capitals with regard to their participation in any meeting involving more than the Big Four. It is not likely, in view of the current state of Soviet-Yugoslav relations, that the Soviets will press for Yugoslav participation. As far as the West is concerned, we see no real advantage to Yugoslav participation and we are under no compulsion to back their claim (as we are with Italy). We should, therefore, support the participation of Yugoslavia only if composition of the meeting is to include all European countries who have a legitimate and direct interest in European security or all countries formerly at war with Nazi Germany.

10. Whatever formula is adopted, it should be made clear to the Soviets that this does not constitute a precedent for exposition of a possible Summit meeting. Participation at such a meeting would depend on the problems to be considered and would be the subject of a separate negotiation.

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Tactical Handling of the Problem of German Participation

Background

At the Geneva meeting of Foreign Ministers in 1955, the question of German participation was dealt with in the Directive of the Heads of Government to the Foreign Ministers in the following language:

"The Foreign Ministers will make whatever arrangements they may consider desirable for the participation of, or for consultation with, other interested parties."

By arrangement with the Soviet Foreign Minister, German representatives did not participate in the conference, nor did they attend it. The two German delegations, headed by their respective foreign ministers were present in Geneva and were consulted outside the conference.

The formula contained in the last Western note to the Soviets (March 26) reads:

"The United States Government also notes that the Soviet Government agrees with the proposal made in its note of February 16 that German advisers should be invited to the meeting on May 11 and be consulted."

This language suggests that, in contrast to the 1955 meeting, the West agrees that the German advisers will be physically present at the meetings of the Foreign Ministers, available to provide advice to each side.

There is good ground for supposing that the Soviets will not contest

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this method of handling the problem of German participation. To a question put to him by Ambassador Thompson on the occasion of the handing over of the Soviet note of March 2, asking how the Soviets envisaged the representation of East and West Germany, Gromyko replied that "in essence he thought there was no difference between our proposal and theirs". buttressing this view is the language used in the last Soviet note (March 30) which suggests that this question is agreed:

"As follows from the exchange of opinions which has taken place, the question about both German states - the German Democratic Republic and the Federal Republic of Germany - being represented at the conference of the Ministers of Foreign Affairs beginning May 11 can be considered agreed on."

Nevertheless, it should be noted that throughout the exchange of notes (including the note just cited) the Soviets have consistently used language emphasizing the necessity for the "representation" of the Federal Republic and the East German regime (see annex). It cannot be excluded therefore, (in order to extract some degree of recognition for the East German regime) that at the opening of the conference the Soviets will argue for a greater degree of participation by the two German contingents than the Western formula suggests. They might propose, for example, that the Germans present have the right to speak directly at the meeting, arguing that the nature of the agenda is such that questions like reunification and the contents of a peace treaty are largely if not exclusively matters for the governments of the two parts of Germany to deal with. They may also suggest at some point that the two German

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delegations be asked by the Foreign Ministers to consult together and propose solutions on reunification and, conceivably, the contents of a peace treaty.

Western Position

The problem raised by German participation is twofold: First, it is important to the West to avoid, as far as possible, the enhancement of the status of the East German contingent, because of the nature of the regime which it represents. Second, it is important to avoid agreement to discussions between the two German contingents under the aegis of the Foreign Ministers until such substantial progress has been made by the Four Powers as to justify such discussions. Both of these questions raise, in addition to political problems, the possibility of damage to the legal position of the West as concerns its refusal to accord recognition of any kind to the East German regime.

The Soviets will undoubtedly insist on strict parity of treatment of the two German contingents. The West has, in effect, accepted this idea as appears from the exchange of notes.

The West is opposed to the accreditation of German delegations to the Conference. They should be regarded as appendages, in each case, of the Soviets and the West.

The Federal Republic has indicated who will head its delegation, but might wish to match the level of its representation to that of the East Germans.

Practices

The Western Powers should counter any Soviet claim (should it arise) for full participation by representatives of both Germanies or for side discussions between them by pointing out that the basic legal responsibility for the solution of the matters before the conference rests with

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the Four Powers. This responsibility cannot be discharged except by agreement among the Four Powers on the questions left outstanding after World War II. The question of Berlin is not a problem for the two Germanies to solve, nor is the question of reunification, nor a peace treaty. (Obviously the argumentation against the Soviet claim for German representation becomes involved in the substance of the Western position on the method of German reunification and on a peace treaty.)

It follows from this that the German participation should be limited to each side consulting with each German contingent in the course of the meetings.

The Federal Republic delegation will no doubt wish to be physically present at the meetings of the Foreign Ministers. The Western formula, as has been pointed out, justifies this claim. In order to make its point, however, that German participation is limited to the giving of advice to the delegations on each side, the Germans should not have a place directly at the conference table, but should be seated in a way which clearly indicates that they are not participants. They should not at any stage directly participate by speaking at the meeting. Their views should be taken into account only through the provision of advice to the direct participants.

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ANNEX

References to German Participation in the Exchange of Notes

The question of German participation was first raised in the Soviet note of January 10. In it the Soviets said that if the Western Powers are prepared to discuss the contents of a peace treaty prior to the convocation of a peace conference the Soviet Government would be agreeable. The note then went on:

"In this case it will be necessary to insure an adequate participation of the German Democratic Republic and the Federal German Republic as states directly interested in the conclusion of a peace treaty with Germany."

The Western reply of February 16, announced willingness to participate in a conference of Foreign Ministers to deal with "the problem of Germany in all its aspects and implications", and treated German participation in the following way:

"It is suggested that German advisers should be invited to the Conference and should be consulted."

The Soviet note of March 2, 1959 proposed a Summit Conference in which the Poles and the Czechs should participate and suggested that at the Summit Conference "in the examination of questions about a peace treaty with Germany and about West Berlin both the German Democratic Republic and the Federal Republic of Germany must be represented." The note suggested that if the Western Powers were not yet ready for a Summit Conference a Foreign Ministers

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Conference could be convoked to examine questions concerning a peace treaty with Germany and of Berlin. For such a Foreign Ministers' Conference the Soviets treated the question of German participation as follows:

"Besides, the Soviet Government declares its agreement with the proposal of the governments of the United States of America, Great Britain, and France that at this meeting both German states - German Democratic Republic and Federal Republic of Germany - would be represented."

To the Soviet note of March 2 the Western notes of March 26 in reply said:

"The United States Government also notes that the Soviet Government agrees with the proposal made in its note of February 16 that German advisers should be invited to the meeting on May 11 and be consulted."

On March 30 the Soviets replied:

"As follows from the exchange of opinions which has taken place, the question about both German states - the German Democratic Republic and the Federal Republic of Germany - being represented at the conference of the Ministers of Foreign Affairs beginning May 11 can be considered agreed on."

On March 31, the Soviets replied to the Federal Republic's note as follows:

"The Soviet Government takes note of the Federal Government's decision to send its representatives to the Foreign Ministers' Conference."

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A Redraft of the Reunification Sections of the "Phased Plan"
In the Light of Objections Raised by Foreign Minister von Brentano

The German Foreign Minister in the March 31-April 1 meetings objected strongly to some of the basic features of the sections on reunification in the "Phased Plan" contained in Annex A of the Four Power Working Group Report of March 21. He felt that these proposals would lead to the establishment of a de facto confederation in which East Germany would be able to exert a dangerous influence on West German policy. On April 1 he submitted a memorandum to the Foreign Ministers which is attached at TAB A.

The plan outlined in this paper goes only a very little way beyond the Geneva proposals on reunification.

It will be recalled that the Eden Plan provided at Stage A of Stage I for the preparation of an electoral law by France, the USSR, the UK and the US in consultation with German experts. This presumably called for a Commission composed of representatives of the Four Powers plus East and West German experts.

The German memorandum proposed establishing a special mixed Commission of East and West Germans to (1) draft an election law, (2) make suggestions how the technical contacts between the Federal Republic and the Soviet Zone can be increased and strengthened during the period from the establishment of the Commission until the elections and (3) examine the possibilities for the realization of Articles 14 through 16 of the Soviet Draft Peace Treaty and make proposals thereon. The members of the Commission are to be appointed by the authorities of the GDR on the one side and by the Federal Government on the other side.

The German memorandum also proposed dropping the concept of basing membership on the Laender while at the same time insisting that the concept of parity cannot be accepted. The reason the United States plan has suggested calculating the composition of a Commission on the basis of Laender (which still exist on paper in the East German constitution) was that this seemed the simplest and most convincing basis for countering the inevitable Soviet insistence on parity.

If the exact formula for composition proposed in the "Phased Plan" seems unacceptable to the Germans, another one might be worked out - for example, the following which keeps the concept of basing membership on the principle of Laender representation:

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"A Commission composed of two delegates from each of the German Laender and East and West Berlin should be selected to act as the agents to the Four Powers in drafting an electoral law subject to the approval of the Four Powers. The methods by which the delegates are to be chosen would be determined by the Three Western Powers in the case of delegates from the Western Laender and West Berlin and by the USSR in the case of the delegates from the Eastern Laender and East Berlin. The Western Powers should announce that they would name as delegates the two persons selected from the Legislatures of each Land and West Berlin by the Federal German Government."

The new German proposal in effect destroyed the content of a "Phased Plan" into which one could fit elements in the security field. The all-German Commission under the German plan might theoretically do its work in three months or procrastinate for ten years. A fixed time limit providing for a reasonable period of adjustment is far more plausible. The U.S. therefore proposed three years. Among other things, this would give time for the German Government to complete its military buildup.

The German memorandum failed to respond in any way to the Soviet argument that the West insists on reunification on terms which will put the West German majority in a position to blot out the "social achievements" in East Germany. This is, of course, not a genuine argument. But it has the sort of superficial plausibility which might take in the uninformed. Its appeal should not be underestimated, particularly in the uncommitted countries. The U.S. suggestion about Laender competencies was made with this in mind. The "social achievements" point should not be completely ignored. We understand that the German Basic Law provides possibilities for dealing with such questions as was done -- for example, in the constitution of the state of Hesse. This is an important matter which should not be entirely dropped. (See para II A2 of Tab B).

The German proposal limited the role of its all-German Commission to making suggestions with the exception of drafting an electoral law. There seemed to be great promise in using an all-German Commission to coordinate the "non-political" aspects of the relationship between the Federal Government and the GDR involving communications, postal service, trains, movement of persons and possibly interzonal trade as proposed in the "Phased Plan". This proposal was not considered dangerous. It gave the commission no executive authority. It dealt with fields in which there are

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numerous existing contacts. It provided a forum in which the question of contacts on the high governmental level with the GDR would not arise in the same way in which it was bound to be brought up by the GDR in other contexts because the GDR members of the Committee would be nominated by the Soviet Government (if the formula proposed above is accepted). Moreover, it increased the chances of the Federal Republic exerting influence in the Soviet Zone through a non-objectionable institutionalized channel. All of these features seemed to have advantages. Furthermore, by adding a new element it embellished the Geneva proposals.

It is believed that the U.S. delegation should endeavor to restore the features discussed above to the Outline Plan although it could consent to agreeing to a revised formulation which would adopt some of the German suggestions.

Attached at TAB B is a redraft of the reunification portion of Stage II and A and B of Stage III of the "Phased Plan" taking into account the German paper of April 1. The features which the U.S. wishes to preserve but which are objectionable to the German Foreign Minister are put in brackets and noted as U.S. proposals. German proposals which we would like to eliminate are put in brackets and noted as German proposals. The language suggested by the German plan which is not objectionable is noted as originating from the Germans but not put in brackets.

* This is obviously a somewhat artificial, largely verbal effort to save at least the framework of the Phased Plan in the event that the Germans prove obdurate. It is preferable to a complete junking of the plan.

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April 1, 1959

Re: Preliminary steps to the reunification of Germany.

The report starts from the assumption that the actual process of reunification, which cannot be achieved otherwise than by free elections, is to be preceded by preliminary steps.

The proposal to establish, first of all, a special mixed commission which has to prepare the technicalities of the election is good and acceptable. In a sense it meets halfway the Soviet position that the reunification is a matter to be dealt with by the Germans themselves. The proposal also serves to weaken the frequently advanced reproach that by putting free elections at the beginning of the reunification process something is requested from the Soviet Union which it simply cannot accept.

For the formation of such a commission and the outline of its responsibilities the following has to be kept in mind:

- (1) This commission has to be clearly distinguished from any other body which might give expression or set the preparatory stage for the idea of a confederation, even if it were of a temporary kind only.
 - (2) The principle of parity must be rejected. The application of parity would be the sacrifice of the fundamental democratic principle of decision by majority.
 - (3) The responsibilities should be limited to the preparation of free elections. There are, however, no objections to grant the commission the right to make suggestions how the technical contacts can be increased and strengthened during the period from the establishment of the commission until the elections. It might also be considered to assign to the commission the special task of examining the possibilities for a realization of Article 11 through 16 of the Soviet Draft Peace Treaty and to make proposals in the same direction.
 - (4) The composition and responsibilities of such a commission have to be examined with extreme care because they might determine the whole future development of all-Germany.
- a) Composition. The proposal of the Working Group has to be examined. According to the proposal the representatives of the Soviet Occupied Zone will be appointed by the Volkskammer, the representatives of the Federal Republic by the parliaments of the states (Länder). This would serve to increase the reputation of the Volkskammer and to devalue the freely elected German Bundestag. Such a procedure would also shift in an arbitrary way the balance in the commission. It must be examined whether or not it is better to propose that the members of the commission should be appointed by the authorities of the GDR on the one side and by the Federal Government on the other side. Thus, the dangerous illusion to take the appointment

by the Volkskammer for an actual election would be avoided.

- b) The limitation of tasks as mentioned before would establish the responsibility of the commission for the draft of an election law. This commission, having no democratic legitimation, would have no other executive or administrative powers. The right to make proposals with regard to the strengthening of technical contacts, of the freedom of movement of freedom of thought and publication as well as the right to make proposals with regard to securing human rights would force both parts of Germany to express a view on such proposals. Thus, the Soviet Occupied Zone would have to accept the sole responsibility for the advancement of such a development.
- 5) The proposal to replace this commission at a later date by an "All German Council" does not seem suitable. It is almost impossible to elect the representatives in the states (Länder). In the Soviet Occupied Zone the states exist only on paper. Meanwhile they have been practically removed. In addition, it would be extremely difficult with regard to the technical requirements to elect such a small number of representatives. (The draft, for instance, mentions five representatives in states with more than five million inhabitants.) Results subject to the caprice of fortune could not be excluded.
- 6) Therefore, we should request that the commission prepares an election law. At an earlier date the Bundestag has already drafted principles for such an election law which could be presented to the commission.
- 7) As far as the elections themselves are concerned, assurances should be established that they will be really free elections. It is not sufficient to assign this task to the commission. The commission would have no possibility to guarantee the freedom of the elections in the Communist dominated zone. It should be considered whether the elections should be held under the supervision of the United Nations.
- 8) In a certain way these proposals represent a maximum program. The West should not avoid to counter the maximum requests of the Soviet Union by maximum counter-requests, provided that they are presented in a way that public opinion understands them as a constructive contribution. The readiness to meet the maximum requests of the Soviet Union with minimum requests contains the great danger that the margin of negotiations will be limited to the disadvantage of the West. This preliminary position shows that the report of the Working Group raises very grave problems. The Federal Government is going to prepare its ideas for the coming additional negotiations of the Working Group and will present them after their acceptance by the Cabinet.

Washington, April 1st, 1959.

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Stage II

The following measures in the reunification and security fields should be taken without delay after the conclusion of Stage I.

Reunification Measures

A. Bearing in mind the complex issues involved in reunification, a transitional period should be agreed during which an all-German Commission should draft an election law [the outline of a law providing for a provisional all-German authority and an all-German constitution] (U.S. proposal)

1. The draft electoral law shall contain provisions guaranteeing freedom of elections.

[2. The Four Powers will declare their readiness to approve a constitution establishing a German Federal Union in which authority to regulate social and economic matters would be vested in freely elected Laender legislatures. Authority in the fields of finance and currency and external relations and defense should be exercised by a federal cabinet responsible to a freely elected federal parliament. The draft constitution after approval by the Four Powers should be submitted to the German people in a plebiscite.] (U.S. proposal)

B. To implement the proposal in A above, an all-German Commission composed of two delegates from each of the German Laender and East and West Berlin should be designated as the agents of the Four Powers in drafting an electoral law [the outline of a law providing for a provisional all-German authority and the all-German constitution] (U.S. proposal) subject to the approval of the Four Powers as follows:

A commission composed of two delegates from each of the German Laender and East and West Berlin should be selected to act as the agents to the Four Powers in drafting an electoral law subject to the approval of the Four Powers. The methods by which the delegates are to be chosen would be determined by the Three Western Powers in the case of delegates from the Western Laender and West Berlin and by the USSR in the case of the delegates from the Eastern Laender and East Berlin. (The Western Powers would announce that they would name as delegates the two persons selected from the Legislatures of each Land and Western Berlin by the German Federal Government) (New language suggested to meet German objections about giving SPD-dominated Laender legislatures the right to choose members of an all-German Commission)

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~~the all-German Commission~~ shall reach decisions by a two-thirds majority.

D. The Commission shall have no executive authority. Its tasks shall be to:

1. draft an electoral law [a law establishing a provisional all-German authority and all-German constitution] (U.S. proposal) as provided for in B above.
2. [make recommendations regarding the extension and coordination] (German proposal) [coordinate] (Working Group proposal) technical contacts between the parts of Germany in the fields of traffic, postal-and-telecommunications and trade;
3. examine the possibilities for the realization of Articles 14 through 16 of the Soviet Draft Peace Treaty; (German proposal)
4. investigate the conditions for free elections throughout Germany and when these conditions exist certify this fact to the Four Powers. (U.S. suggestion to meet German views)

E. During the interim period, freedom of movement of people, ideas and publications should be assured.

STAGE III

Reunification Measures

A. [Upon certification by the all-German Commission that conditions for free elections exist throughout Germany] (language which should be adopted if German proposal adopted to preserve some elements of a Phased Plan) [Three years after the signature of this agreement] (U.S. proposal) elections for an all-German assembly shall take place in Germany under the provisions of the electoral law drafted by the all-German Commission and approved by the Four Powers.*

* And in the American alternate plan under the terms of the constitution provided for in the American plan.

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1. If the all-German Commission has not certified the existence of such conditions on or before the termination of a three-year period beginning on the date of the signing of this agreement this said agreement shall become null and void on the date of termination of the above specified period. (Suggested new language to preserve some elements of a Phased Plan if the German plan is adopted.)

B. The elections should be supervised by a supervisory commission and teams throughout all of Germany, each to be composed either of (a) representatives of the Four Powers or (b) UN representatives. #

#. i.e. the organization and functions of the supervisory commission should follow the pattern of Part I (1) (c) (11) and (111) of the Eden Plan

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PRINCIPLES OF A GERMAN PEACE TREATY

1. The treaty should be signed with a government representing all of Germany.

Remarks: Since the subject of a German peace treaty relates to the whole German state, it must be signed with a government representing the entirety of Germany as it exists in the international sense. The Allied participants in World War II fought against the Third Reich, and it is with that state that outstanding problems, such as treaties, claims and debts, frontiers and similar matters exist. No such war-generated problems exist between the Allies and the regimes now existing in West and East Germany. Accordingly, if a final treaty is desired a government capable of recognition as successor of the Third Reich must at some time be brought into existence with which such a treaty can be concluded.

2. The text of the treaty should be negotiated by a reasonably small group of States, preferably those which carried the principal burden of the war against Germany. A conference should be held thereafter in which all States which were at war with Germany might participate.

Remarks: Some 45 countries declared war on Germany. Approximately one-half that number made some contribution to the war effort. On the other hand, only a few States were major participants in the war, and of these, four made up the occupying Powers. The principal problems to be settled in a treaty relate to matters of significance to the principal participants in the war, particularly Germany's European neighbors which fought against the Nazi military forces. Accordingly, a formula should be devised which will permit a conference of manageable size to negotiate a draft peace treaty for signature by those States which were at war with Germany

3. The

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3. The treaty should recognize German sovereignty over German territory, i.e., the occupation should be terminated.

Remarks: The principal Powers of the Allied Coalition of World War II by mutual agreement embarked on a joint occupation of Germany. In the Potsdam Agreement they outlined the political and economic objectives of the occupation. For a period of fourteen years, however, they have been unable to reach basic agreement which would permit a final peace settlement with Germany. An obligation rests upon the Powers concerned to make every effort to reach such agreement and to relinquish their special position in Germany as soon as possible. The peace settlement which is envisaged is the appropriate document in which to record the termination of the joint occupation of Germany, and this would be indicated by a recognition of German sovereignty over German territory.

4. The boundaries of Germany should be established in the treaty. Germany should renounce all claim to territory outside her boundaries as established.

Remarks: In the Potsdam Agreement it was agreed that certain of the German frontiers should await the peace settlement. Arrangements pending such a final peace settlement were made. The issue is one of great consequence to Germany and to Germany's neighbors who are directly affected. Negotiations should take place within the context of the treaty discussions for the purpose of determining the definitive boundaries of Germany which should then be established in the treaty.

In order to provide Germany's neighbors with an appropriate assurance of the definitive nature of the settlement, the treaty should include a renunciation by Germany of any intention to make future claims to territory not included within the boundaries of Germany as established by the treaty.

5. (Security Provision)

6. Legitimate

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6. Legitimate financial obligations of former German territory should be recognized.

Remarks: Prior to the war, financial transactions of various types were entered into by public, corporate, and private persons and bodies, other than the German State, of a legitimate nature for reasons of advantage to the area of property concerned. Where such transactions resulted in an external debt of obligation of the German debtor, the obligation was in effect an item of property belonging to the creditor and the obligation to pay constituted a burden on the German property in question.

If, by the treaty, it is intended to confirm the legitimacy of the transfer of territory in which the property was located, which was thus the subject of the pre-war debt, it must be recognized that the transfer must acknowledge the legitimate interests of non-German creditors. If such action is not taken, the treaty would in effect be transferring Allied assets from Germany to another member of the Allied Powers.

7. Germany should recognize the validity of the several treaties of peace. It should recognize the prohibition of anschluss with Austria and the sovereignty and independence of Austria.

Remarks: Following termination of the war, the Allied Powers entered into a series of peace treaties with the Powers which participated in world War II in collaboration with Nazi Germany. Agreements were entered into in those treaties involving a complex of matters which in certain cases, affect or may affect German interests. In the peace treaty, Germany should recognize the validity of the treaties of peace which were made between the former Allied Powers and her Allies of world War II.

More specifically, in the Austrian State Treaty it was agreed that the Allied and Associated Powers would incorporate in the German Peace Treaty provisions for securing from Germany the recognition of Austria's sovereignty and independence and the renunciation by Germany of all territorial and political claims in respect of Austria and Austrian territory. Accordingly, the treaty should include a provision designed to carry out this undertaking.

8. The

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8. The Allied and Associated States should agree to support Germany for United Nations membership.

Remarks: In the Charter of the United Nations, the signatories enunciated their purpose to maintain international peace and security and to develop friendly relations among nations and to take other appropriate measures to strengthen universal peace. The principal political instrumentality for accomplishing these purposes is the United Nations Organization itself.

Since by the peace settlement envisaged Germany is to be reconstituted as a sovereign State, and the position is to be taken by the former occupation Powers that the rehabilitation of the former enemy State has been accomplished, then it is entirely appropriate and desirable that Germany be brought into the mechanism of the United Nations as quickly as possible. By this action, Germany will be privileged and obligated to the same extent as other members of the international community, and the purpose of the United Nations can be fulfilled thereby in respect to Germany and its relations with other States.

To this end the Allied and Associated States should be prepared to immediately support Germany for United Nations membership as soon as German sovereignty is confirmed.

9. Pending admission to the United Nations, Germany should agree to conform to the principles of the Charter of the United Nations. The Allied and Associated Powers should recognize that Germany possesses the inherent right of individual or collective self-defense referred to in Article 50 of the Charter.

Remarks: Once Germany becomes a member of the United Nations it will have the rights and obligations stipulated in the Charter including those regarding the pacific settlement of disputes. Recognizing that the effort of the United Nations has contributed substantially to

the development

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the development of better relations between member States, and bearing in mind the importance of the German State in the international community, it will be mutually advantageous, pending Germany's entry into the United Nations, for it to agree to conform to the principles of the Charter and in particular the obligations set forth in Article 2 thereof.

The Allied and Associated States by signing the peace treaty will signal the return of the German State to the international community as a sovereign Power. Consequently they should recognize that as in the case of other States it will possess the inherent right of individual or collective self-defense and (subject to any requirements in the treaty regarding security arrangements) it may voluntarily enter into collective security arrangements.

10. Germany should be free to decide which political and military agreements of the Federal Republic and East Germany it wishes to terminate. Arrangements should be made concerning all other agreements with a view to keeping as many as possible in force.

Remarks: Since Germany, upon the restoration of full sovereignty and termination of the occupation, will be governed by a German government distinct from that obtaining during the occupation period, it should be free to decide which political and military agreements entered into by the Federal Republic and German Democratic Republic it wishes to keep. Such action will make it possible for the German government to determine the course of action it wishes to follow in these matters consistent with the sovereignty restored to it.

On the other hand, agreements not of a political or military nature, which involve matters related to non-political issues, should, in accordance with traditional international law, be retained in effect in accordance with the agreement if at all possible. Such action would lend a factor of stability to the post-treaty German State which would not exist otherwise.

11. An

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11. An appropriate waiver of claims by Germany against the Allied and Associated States and its nationals should be obtained.

Remarks: World War II and the occupation period resulted in a vast complex of relationships between Germany and German nationals and the Allied Powers and their nationals. Unless terminated by an appropriate provision in the peace treaty, these outstanding issues could result in prolonged and intricate litigation involving assertions of claims. In accordance with traditional practice, and in order to draw a definitive line with regard to such matters, an appropriate waiver of claims by Germany should be included in the treaty.

12. Provision should be made for the return of property in Germany of United Nations nationals where this has not already been done.

Remarks: As in the case of the Treaty of Peace with Italy (Article 78) provision should be made for the return of property of United Nations nationals which has not hitherto been returned during the post-war period where such action is possible.

13. Reparations should be renounced and waived to the extent such claims have not been satisfied.

Remarks: In years gone by, agreements have been reached under which reparations were taken from Germany. These matters have now been largely resolved and there is no reason to reopen this complex question. Accordingly, it should be agreed that the question of reparations is not an issue in the treaty.

14. The German government should undertake a responsibility for persecutee claims at least as favorable as has the Federal Republic.

Remarks: One of the most deplorable aspects of Naziism was the widespread persecution of individuals because of their political convictions, nationality, race, faith,

or ideology.

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or ideology. The Federal Republic of Germany, recognizing the responsibility of the German people to attempt to compensate it some way for these acts of the former Nazi Government, have undertaken comprehensive obligations with respect to the settlement of certain claims. The German Government with which the peace settlement will be signed will be the successor of the Third Reich of Adolf Hitler. That government ought not to view with any less responsibility these obligations of the entire German people in this matter, and accordingly, an appropriate provision should be included in the treaty to ensure that the future German government acts at least as favorable to such claimants as has the Federal Republic of Germany.

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1. Since the subject of a final German peace treaty relates to the whole German State, it must be signed by a government capable of reaching the entirety of Germany. The Allied participants in World War II which would sign the treaty fought against the Third Reich, and it is with Germany as an international entity that outstanding problems remain, such as treaties, claims and debts, frontiers, and similar matters. No such relationship resulting from a war exists between the Allied Powers and the regimes now existing in West and East Germany. Accordingly, in order for a final treaty to be effective, it must be signed with a German Government capable of recognition as the successor of the Third Reich.

2. The text of the treaty should be negotiated by a reasonably small group, preferably those States which carried the principal burden of the war against Germany. The principal problems to be settled in the treaty relate to matters of significance to the major participants in the war and to Germany's European neighbors which fought against the Nazi military forces. A formula should be devised which will permit a conference of manageable size to negotiate a draft peace treaty for signature by those States which were at war with Germany.

3. The treaty should recognize the restoration of German sovereignty over German territory, thus having the effect of terminating the occupation undertaken by the principal Powers of the Allied Coalition of World War II. An obligation rests upon the occupation Powers to make every effort to reach a final peace settlement with Germany under which they will relinquish their special position in Germany. The peace settlement is the appropriate document in which to record the termination of the joint occupation of Germany by a recognition of German sovereignty over German territory.

4. The boundaries of Germany should be established in the treaty, and Germany should renounce all claim to territory outside her boundaries as established. The signatories of the Potsdam Agreement agreed that the final delimitation of the German frontier in certain areas should await the peace settlement. Recognizing the importance of this issue to Germany and to her neighbors who are directly affected, negotiations should take place within the context of the treaty discussions for the purpose of defining the final boundaries of Germany, which negotiations, if undertaken in a constructive spirit by the parties concerned, can contribute substantially to a just treaty. In order to provide Germany's neighbors with an appropriate assurance of the definitive nature of the settlement, the treaty should include a renunciation by Germany of any intention to make future claims to territory not included within the boundaries of Germany as established by the treaty.

5. Security provisions

6. Legitimate pre-war financial obligations of territory then German should be recognized. If, by the treaty, the legitimacy of the transfer of certain territory is to be confirmed, the legitimate interests of non-German creditors in property transferred must be acknowledged. Otherwise the treaty would be transferring property which is subject to an Allied claim from Germany to another Allied state.

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7. The Allied and Associated States should agree to support Germany for membership in the United Nations.

8. Germany should be free to decide which political and military agreements entered into by the Federal Republic and the East German regime it wishes to terminate. Such a provision is appropriate in view of the fact that upon signature of the treaty Germany will be restored as a fully sovereign state. In order to facilitate an orderly and stable transition, agreements not related to such matters should, in accordance with traditional international law, be retained if at all possible.

9. An appropriate waiver of claims by Germany against the Allied and Associated States and their nationals should be obtained.

10. Provision should be made for the return of property in Germany of U.N. nationals where this has not already been done.

11. Reparations should be renounced and waived to the extent such claims have not been satisfied.

12. An appropriate provision should be included in the treaty to ensure that the future German government acts at least as favorably to former Nazi persecutees in respect of claims as does the Federal Republic of Germany in recognition of the fact that one of the most deplorable aspects of Nazism was widespread persecution.

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Suggested Western Position

1. The Western Powers should include a proposal on Berlin as part of their general proposal covering the German question as a whole and European security. (FYI The Four-Power Working Group Report did not contain any specific recommendation as to what the Western Powers should propose concerning Berlin.) In so doing they can make a proposal which goes somewhat beyond the status quo. Any general package would appear incomplete to public opinion if it made no specific reference to Berlin. Since Soviet acceptance of a general plan would indicate a readiness on their part to deal with the basic cause of the Berlin problem -- i.e., the division of Germany -- the West can afford to consider a change in the status of the occupation regime along the lines indicated below within such a context. However, in presenting such a proposal on Berlin, the Western Powers should make it clear that it is not a standing offer but something to be considered and executed only as part of a larger agreement on the entire plan for reunification, European security and a peace settlement.

2. The Western powers should present the following proposals (to become effective at an appropriate point during the second stage of our plan on reunification and security) on Berlin at the same time that they present their proposals for a general settlement of the German problem.

A. Berlin is one city and belongs to all of Germany. East and West Berlin should, therefore, be united through free elections held under UN supervision.

B. Simultaneously a plebiscite, likewise under UN supervision, should be held to determine the wishes of the Berlin population as to whether foreign troops should remain in Berlin, and if so, troops of which country or countries.

C. The GDR should remove its capital from Berlin so that the city may remain in trust as the destined capital of a reunited Germany to be achieved in Stage III.

D. During the interim period until Germany is reunited and a peace treaty is entered into the Four Powers should guarantee the continued presence of such foreign troops in Berlin as may be approved under B and free and unrestricted access to Berlin.

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3. If forced into a consideration of the problem of Berlin alone by reason of Soviet refusal to discuss a general settlement of the German problem, the Western powers should take the following positions in the indicated sequence.

A. The Western powers should propose that all Berlin be united under free elections under UN supervision, that forces of the four occupying powers should remain (with the Vienna-type veto), that access routes be guaranteed by the Four Powers, and that the capital of the GDR should be removed from Berlin.

B. Alternatively the Western Powers should propose that free air and surface access to Berlin under tripartite control be agreed by the Soviets. This would be the logical consequence of the legal fact that Soviet abandonment of their occupation rights would result in the ending of any limitation on the occupation rights of the Three Western Powers which they had agreed with the Soviet Union in 1943-1945.

C. If the foregoing positions (3A-B) prove non-negotiable, then the Western Powers should agree to the Soviets turning over the traffic control and check points on the access routes to GDR personnel with an explicit written agreement with the Soviet Union that in so doing the GDR is acting as agent for the Soviet Union. Such agreement should further provide the terms on which freedom of access to Berlin could be maintained.

D. If the foregoing positions prove non-negotiable, the Western Powers should propose a specific arrangement along the lines set forth in Tab A.

E. If this position (3D) proves non-negotiable, then the Western Powers should revert to insistence on the maintenance of their present rights of presence in West Berlin and access under existing agreements with assurances from the Soviets that the exercise of their rights will in the future be completely free from interference or harassment.

4. Although (3) above should be the final Western Position, the United States should not discourage the other Foreign Ministers from expressing their views on other possible variations of the above or other fall-back positions during the March 31 - April 1 discussions.

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MEMORANDUM

Subject: Elements of a Limited Interim Agreement on Berlin

I. Introduction

1. This memorandum sets out one type of limited proposal on Berlin which could be considered, if it became clear that no progress was being registered toward German unity. It would seem useful now to agree within the US Government as to what the content of such a proposal might be, even if the proposal were then merely to be held in reserve pending a decision as to whether or when it should eventually be used.

2. The test of this proposal is conceived as being not whether it would be acceptable to the Soviets but whether it would:

(a) if rejected by the Soviets, strike Western opinion as having been sufficiently negotiable to place the onus for any subsequent failure to resolve the crisis peacefully on the USSR, rather than the US;

(b) if accepted by the Soviets, create a situation regarding Berlin which would be at least as favorable to the US as that now existing.

3. This proposal includes (i) some of the elements which were considered by the Four Power Working Group, (ii) certain additional elements not treated in that Group's report.

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report. It would meet the criteria specified by the Four Power Working Group:

(a) It would be a solution devised by the Four Powers, rather than the UN.

(b) It would permit Western occupation troops to remain in West Berlin with unimpaired access.

(c) It would preserve the present basis of our rights in Berlin, i.e., our rights flowing from the military defeat and occupation of Germany.

II. The Proposal

4. The Three Powers would announce:

(a) Their intention to maintain their rights in regard to Berlin, stemming from the military defeat and occupation of Germany and from post-war international agreements with the USSR, until an all-German settlement has reunified Germany in freedom, in order to discharge their responsibilities to the free people of West Berlin.

(b) That they continue to consider the Soviet Government responsible for fulfillment of its obligations to the Three Powers in relation to their presence in Berlin and freedom of access to that city.

(c) That the declarations and arrangements for a UN presence in Berlin set forth below do not in any way alter these existing rights and obligations, stemming from the military defeat and occupation of Germany, but are rather intended to facilitate their fulfillment.

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5. A declaration would be made by the GDR that pending German unification:

(a) It will not deviate from existing procedures (i.e., the procedures that were followed during a specified period, such as April, 1959) regarding allied military traffic to Berlin.

(b) It will be governed by the Paris, June 20, 1949 Big Four Communique in procedures relating to civilian traffic.

6. The USSR would associate itself with this GDR declaration in transmitting it to the US, UK, and France and/or in communicating it to the UN.

7. Declarations would be made by the Big Four Powers that they will not use or threaten force to overthrow existing arrangements regarding the government of Berlin. Separate declarations would be made by the Federal Republic and by the GDR to the same effect.

8. A United Nations Special Representative would be established in Berlin. The agreement concerning his presence and functions, which is set forth below, would be worked out directly between the Big Four, not by the UN. The Big Four would then request the UN to perform the roles called for in that agreement, after the agreement had been concluded. Regardless of the Berlin sector in which the Special Representative and his staff had their headquarters, they would have the right to be present and exercise their functions in both East and West Berlin. In addition to symbolizing the UN interest in Berlin, the UN Special Representative would:

(a) monitor

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(a) monitor fulfillment of the above Declarations concerning free access to Berlin and non-use of force to overthrow existing arrangements within Berlin;

(b) be assisted by a limited staff of UN observers, who would be stationed in Berlin (possibly including the Air Safety Center) and at the access checkpoints, and who could engage in patrols as needed along the surface routes of access, in order to verify fulfillment of these Declarations;

(c) offer local assistance to the interested parties, as they might desire, in any technical discussions among them as to whether the above Declarations were being observed in specific instances;

(d) report to the United Nations as appropriate concerning the above activities.

9. A UN regional office or headquarters with suitable physical facilities could be established in Berlin:

(a) to house the UN Commissioner and observers;

(b) to accommodate any international discussion, other on the all-German settlement, which would fall outside the competence of the UN but which might be held in Berlin;

(c) to provide space for any United Nations meetings that might be held in Berlin and for any United Nations activities that might have requirements in Berlin.

III. Possible Additional Features

The elements set forth below might also possibly be accepted,

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By <u>16</u> <u>3/12/91</u> <u>NARA/DEL</u>

accepted, in response to Soviet proposals or otherwise, if the course of negotiations indicated that this would be in the US interest:

10. Without involving or implying any limitation on the flow of refugees to West Berlin or from West Berlin to West Germany, the UN Representative might be given a special responsibility for handling refugees (using funds provided by the Federal Republic) in the Berlin area so as to:

(a) relieve the occupation powers of the necessity for direct action in this field;

(b) ensure that refugees in West Berlin refugee camps abstained from improper activities and that refugees were not exploited for intelligence and propaganda purposes in the Berlin area.

11. Declarations might be made by the Big Four Powers that they would not carry out inflammatory propaganda from East or West Berlin. This could be related to the UN General Assembly's 1947, 1949, and 1950 Resolutions calling on states to stop inflammatory broadcasts and to the President's proposal to the Emergency UNGA concerning inflammatory propaganda (which included the statement that "if we in the United States have been at fault we stand ready to be corrected").

12. Declarations

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IV. Commentary

(a) It would secure a public GDR declaration, with which the USSR associated itself, to observe the procedures regarding military access which were in effect during a specified period, thus identifying these procedures with considerable precision.

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(c) It would elicit a generalized Bloc declaration not to use force to overthrow existing arrangements regarding Berlin, which might have some political and psychological value in strengthening the status quo.

(d) It would establish authorized UN observers at the access points and routes, who could be helpful both in factually identifying any breach of our access rights and in pinpointing responsibility for that breach.

(e) It would create the possibility that UN observers might play a role in disputes as to whether existing access procedures were being observed in specific instances (somewhat comparable to the role played by UN personnel in Israeli-Jordanian disputes concerning Mr. Scopus convoys). This could make it possible to avoid or minimize Western dealings with East German authorities in any specific disputes as to whether existing access procedures were being observed, if we wished.

14. Our own concessions would not be such as to offset these gains:

(a) The UN presence in Berlin would not represent a net loss for the West, but it might be a face-saving gain for the Soviets, in enabling Khrushchev to claim that the concept of a "free city" had not been wholly discarded.

(b) A self-denying ordinance on certain types of propaganda

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propaganda, if this were agreed, would not represent a critical loss. The definition of inflammatory propaganda (the President and UN spoke of broadcasts which had the effect of "fomenting civil strife and subverting the will of the people in any state") need not be such as to preclude useful information activities.

(c) UN handling of refugees, if this were agreed, would not restrict their flow either to Berlin or from Berlin to the West.

(d) A ceiling on Western forces in West Berlin, if this were agreed, would not involve appreciable reductions, and thus would not affect their capabilities or their symbolic value. It would not take place, moreover, until and unless the limited agreement had been fully observed for a year.

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BERLIN CONTINGENCY PLANNING

Substitutions for U.K. Proposals

The United Kingdom has proposed that the following paragraph be included in Section 5 of the Berlin Contingency Planning paper:

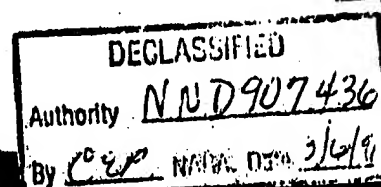
"b. [The Three Powers might adopt an active rather than a passive role and put the matter to the Soviets in the following terms:

"If you wish to divest yourselves of your rights and obligations toward ourselves, we are willing to accept a formal assignment to the GDR on condition that (a) we do not recognize the GDR as a Government but as the authority designated by you for this purpose, and (b) you yourselves, and the GDR as the authority designated by you, guarantee to us that the obligations which you have incurred will continue to be carried out."

The proposal is defective in two instances: First, while occupation rights may be given up, they cannot legally be transferred to the occupied, as the making of such an assignment constitutes recognition of the sovereignty of the entity in control of the area previously occupied. Moreover, despite the disclaimer of recognizing the GDR as a government, the acceptance by us of a guarantee by the GDR involves agreement between the GDR and ourselves on matters of high political importance. Under these circumstances there is a serious question whether entering into such an agreement of guarantee would not amount to de jure recognition. A revision of the British proposal which avoids these problems and achieves the same substantial results would be to make the following proposal to the Soviets:

"5.b. We cannot

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"5.b. We cannot prevent you from withdrawing the Soviet representatives who have been acting for the U.S.S.R. in connection with the established procedures under which France, Great Britain, and the United States exercise their right of free and unrestricted access to Berlin. Despite the fact that we consider such withdrawal as a violation of the existing agreements regarding Berlin, which would justify exercise of our rights of access without regard to the established procedures, we are prepared to continue to exercise those rights in accordance with the procedures currently in effect on condition that you guarantee to us that the obligations which you have incurred will continue to be carried out."

Under this proposal we would deal with the GDR officials at checkpoints precisely as we now deal with the Soviet officials but, in view of the guarantee from the Soviet Union, would be able to treat the GDR officials as agents of the U.S.S.R. because the latter would retain fundamental responsibility. Furthermore, in the event of attempts by the GDR to modify or interfere with our access rights, we would have a basis for insisting that the Soviet Union take action to ensure respect for our rights.

The United Kingdom also proposed a paragraph be in Section 9 of the Contingency Planning paper as follows:

"b. [Alternatively, the legal basis of such action, namely that the Three Powers would succeed to Soviet rights if the Soviets withdraw, might be mentioned in discussions with the Soviets.]"

This proposal,

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By C&P NAVA Date 2/6/91

This proposal, while acceptable in principle, is not formulated correctly as the Three Powers would not succeed to Soviet rights if the U.S.S.R. withdrew from occupation, but would instead resume the exercise of full occupation powers unlimited by the prior limitations of such rights which had been previously agreed upon with the U.S.S.R. That is, as a result of the Soviet withdrawal, the Three Powers would be entitled to occupy all of Germany so as to ensure the maintenance of their rights with respect to Germany as a whole. The following paragraph is suggested as a substitute for the British proposal:

"9.b. Alternatively, the legal basis of such action, namely that the renunciation by the Soviets of their occupation rights would entitle the Three Powers, as the sole remaining occupying Powers in Germany, to exercise the rights vacated by the U.S.S.R., might be mentioned in discussions with the Soviets."

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Authority NND907436
By CSP NARA Date 3/6/97

Dear Mr. Irwin:

1. We have reviewed the reservations of the Department of Defense relating to security and arms control provisions contained in the Report of the Four Power Working Group "Phased Plan" for German reunification.

2. It is the view of the Department of State that the security and arms control measures contained in the enclosure be approved as instructions to the U.S. Delegation to the Four Power Working Group in London beginning April 13, 1959. The security measures in the enclosure include those elements of the August 29, 1957 disarmament proposal which we believe are appropriate in connection with a German reunification and European security proposal.

3. In response to views expressed by the Department of Defense, consideration has been given to including all of the August 29, 1957 Western disarmament proposals in the U.S. position for the Four Power Working Group meeting. We have concluded that all of the 1957 Western disarmament proposals are not adaptable to German reunification proposals for the following reasons:

a) Parts of these proposals relate merely to such matters as disarmament studies or to disclosures of military budgets. They do not by themselves affect the security posture of the West or the Soviet Union, are only remotely connected with German reunification and would needlessly complicate and confuse the proposal.

b) The operative parts of the 1957 proposal (those elements other than second and third step force level reductions to be negotiated later) were for implementation prior to progress toward the solution of political issues. It would be difficult, therefore, to incorporate the 1957 proposal into the "Phased Plan" without placing the operative parts of the disarmament proposal in Stages I or II; indeed, if the latter of the 1957

proposals

The Honorable

John N. Irwin, II,

Assistant Secretary of Defense

for International Security Affairs.

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By CEP NARA Date 3/6/91

proposals were followed strictly, all of the operative parts should be included in Stage I of the "Phased Plan" prior to progress toward the solution of political issues. It is clear that the phasing, such as it was, of the 1957 disarmament "package" was of a different type than that in the "Phased Plan" for German reunification and it is, therefore, difficult to equate the two types of stages.

c) Certain individual elements of the 1957 proposal (nuclear testing, an Arctic inspection zone, and a study of outer space controls) have been separated from the "package".

4. The Department of State agrees with the Department of Defense proposal that over-all force level reductions be tied to reductions in armaments, using the force level-armaments formula in the 1957 proposal for reductions to 2.1 million and 1.7 million for the U.S. and USSR. Accordingly, a provision has been added (para 3 of Stage III in the enclosure) which incorporates the elements of the 1957 formulation.

5. It is highly improbable that the Soviets will agree to the reunification of Germany and most certainly not under any circumstances which will be acceptable to the West. At the same time, for psychological and propaganda reasons, the West, in any proposal calling for the reunification of Germany, must put forward proposals which include security measures which appear reasonable and which, though unlikely, if accepted by the Soviet Union must not work to our disadvantage.

6. The most appropriate security measures to meet this criteria are, we believe, those involving inspection and observation as a measure of protection against surprise attack. Here the question is not so much whether a particular proposal in the surprise attack field has less value than more ambitious proposals, but whether it is "new" and whether it would adversely affect the Western security posture. It is with these criteria in mind that we have included the two inspection zones set forth in the enclosure as paragraphs 2 and 3 in Stage II. It is, for the purposes of reducing political concerns in Europe regarding inspection in that area, that we have used the formula of the second zone which connects a European zone with inspection which includes part of the U.S.

7. We have also included as one of the measures for implementation in Stage III a provision regarding which the Department of Defense had expressed reservations but had agreed to study, a proposal to restrict ballistic missiles with a range of 500 nautical miles or more from the Special Security Area. - It is not our intention to propose any restrictions

on existing

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on existing Western ballistic missile capabilities in the Federal Republic, and if a range figure of 700 nautical miles would more adequately cover Western capabilities in the Federal Republic, we propose that figure be adopted.

8. The quadripartite Foreign Ministers instructions to the Four Power Working Group for their meetings beginning April 13 require the Working Group to make recommendations for both indigenous and non-indigenous force level ceilings within the Special Security Area, for implementation in Stage III of the Phased Plan. It is, therefore, necessary to have the views and recommendations of the Department of Defense on this matter. Specifically, what would be reasonable force level ceilings within the Special Security Area (a) for a reunified Germany, and (b) for non-German NATO forces, under the following conditions:

- 1) If over-all force level ceilings had not yet been applied to the U.S., USSR, France, and the U.K.
- 2) When over-all Soviet and U.S. forces were reduced to 2.1 million, with concurrent armament reductions.
- 3) When over-all Soviet and U.S. forces were reduced to 1.7 million, with concurrent armament reductions.

9. The views of the Department of Defense on the security and arms control features of the "Phased Plan" outlined in the enclosure are requested by the afternoon of April 10, together with an indication of when the Department of Defense will be able to furnish suggestions for indigenous and non-indigenous force level ceilings in the Special Security Area, as outlined in paragraph 8 above. Because we must be able to instruct the U.S. Delegation to the Working Group, it is necessary that any points remaining at issue between our two departments be identified for decision at a higher level by the end of this week.

Sincerely yours,

Livingston T. Merchant
Assistant Secretary

Enclosure

Security and arms control
provisions of Phased Plan

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Authority <i>NND907436</i>
By <i>CEP</i> NARA Date <i>3/4/91</i>

Security and Arms Control
Provisions of the Phased Plan for
German Reunification

Stage I

1. The Four Powers in a common declaration, to which they would invite other interested European states to associate themselves, as appropriate, would undertake to:

- (a) settle, by peaceful means, any international dispute in which they were involved with any other party;
- (b) refrain from the use of force in any manner inconsistent with the purposes of the United Nations (In this connection the Government of the Federal Republic would at a suitable moment formally include its Eastern neighbors by specific reference in its renunciation of the use of force.);
- (c) withhold assistance, military or economic, to an aggressor;
- (d) establish suitable provision for consultation among the parties to implement the arrangements provided for in this agreement;
- (e) state that during the period of implementation of the Western offer, they will not transfer into the custody of countries within a Special Security Area, comprising all the territory of Germany, Poland and Czechoslovakia, and possibly Hungary, nuclear warheads, unless these countries are the victims of aggression which contravenes the undertakings in paragraph 1(b) above.

2. Discussions to develop procedures for exchanging information in Stage II on military forces in all Germany, Poland, Czechoslovakia, and possibly Hungary, would be arranged.

Stage II

1. An exchange of information on military forces in all of Germany, Poland,

- * It will be explained at the time the Western offer is submitted that the retention of custody envisaged is the degree of U.S. control over U.S. nuclear warheads required by present U.S. law, but that it would not preclude the U.S., for example, making available under U.S. control nuclear warheads to German forces and training German forces in their use in accordance with present or future arrangements.

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Czechoslovakia and possibly Hungary would be undertaken.

2. As an initial step in the direction of more significant measures to reduce the danger of surprise attack, a zone of inspection should be instituted at the beginning of the third year after the agreement in principle on the over-all plan, to include the area in Europe from 5° East longitude to 35° East longitude and bounded in the south by 42° North latitude. The system of inspection will include aerial inspection, with ground observation posts at principal ports, railway junctions, main highways, and important airfields, etc. as agreed. A system of overlapping radar posts may also be a part of the inspection system.

3. At the same time as the above zone is installed (paragraph 2 above), a zone of inspection shall be installed in Eastern Siberia and in the North American continent beginning from the Bering Straits. This zone shall be defined so that the U.S. and the USSR territory in the two zones are of equal proportion to the total territory of each. The measures of inspection and observation in this zone shall be determined in the light of the particular requirements for the area.

4. Upon establishment of an inspection system to insure compliance, the countries within the Special Security Area would assume an undertaking that they will not produce chemical weapons, bacteriological weapons, nuclear weapons.

Stage III

1. Upon the establishment of an all-German government and at the same time as agreement is reached in accordance with paragraph 2 below on over-all ceilings the U.S., U.K., France and the USSR should also agree that in a zone comprising a reunified Germany, Poland, Czechoslovakia, and possibly Hungary the total number of effective combat forces of non-German NATO countries shall not exceed _____ and the total number of Soviet effective combat forces shall not exceed _____ on the following conditions: These figures to be recommended by the Working Group.

- (a) That after conclusion of the peace treaty no party should station forces in any country in that zone without the consent of the country involved and upon the request of that country would withdraw its forces within a stated period and would undertake the obligation not to send forces to that country again without the consent of its government.
- (b) Without prejudice to paragraph 1(a) above, further reductions of non-German NATO and Soviet forces in the Special Security Area shall be carried out in conjunction with reductions in over-all ceilings.

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2. The Four Powers will, upon the installation of an inspection system to verify compliance and the extension of the disarmament convention to other essential States, reduce their armed forces to the following levels: France, 700,000; United Kingdom, 700,000; Soviet Union, 2,100,000; United States, 2,100,000. When compliance with the above limitations has been verified to their satisfaction, the Four Powers will further reduce their armed forces to the following levels: France, 650,000; United Kingdom, 650,000; Soviet Union, 1,700,000; United States, 1,700,000. The levels of other essential States would be specified at the same time through negotiations with them.
3. At the same time as the above over-all force level limitations are applied, and subject to the same conditions, the Four Powers will place in storage depots, within their own territories, and under international control, agreed specific quantities of designated types of armaments so that the armaments at the disposal of each party do not exceed the quantities allowed in each category.
4. Ceilings would be agreed upon for the total forces of a reunified Germany and the total forces of Poland and Czechoslovakia, and possibly Hungary and these ceilings should go into effect at the time of the formation of an all-German government. [These figures to be recommended by the Working Group.]
5. Upon establishment of an effective inspection system to ensure compliance, the Four Powers, together with Germany, Poland, Czechoslovakia and possibly Hungary, will assume an obligation not to introduce, transfer custody or allow the positioning or production within the Special Security Area of ballistic missiles with a range of 500 [or alternatively 700] nautical miles or more.
6. In the case of Germany choosing to become a member of a security system, there might be special measures relating to the disposition of military forces and installations in the parts of the Special Security Area which lie closest to the frontiers between a reunified Germany and countries which are members of another security system.
7. The above security provisions could not be carried out until effective machinery for control and inspection had been established and the all-German government had agreed to the measures called for in Stage III.
8. Should the all-German government decide to adhere to any collective security pact, the Four Powers would be prepared to join with other parties to European security arrangements therein described in additional mutual obligations (along the lines of Article VIII of the Geneva Outline Treaty of Assurance).
9. Should the all-German government decide to adhere to any collective security pact, the Four Powers would be prepared to join with other parties to

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European security arrangements herein described in giving an assurance that they would not advance their forces beyond the former line of demarcation between the two parts of Germany.

10. The Four Powers shall, at the time the measures contemplated in Stage III go into effect, reaffirm their declaration that they will not transfer into the custody of countries within the Special Security Area nuclear warheads, unless these countries are the victims of aggression which contravenes the undertakings in paragraph 16 in Stage I.*

* It will be explained at the time the western offer is submitted that the retention of custody envisaged is the degree of U.S. control over U.S. nuclear warheads required by present U.S. law but that it would not preclude the U.S., for example, making available under U.S. control nuclear warheads to German forces and training German forces in their use in accordance with present or future arrangements.

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S/AE:Weller:ab
April 8, 1959

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By CEP NARA, Date 3/4/9